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A T T O R N E Y S A T L A W

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Charles A. Mullen  
[1937-2001]

November 11, 2003

Federal Election Commission  
Attn: Jeff S. Jordan, Supervisory Attorney  
Central Enforcement Docket  
999 E Street NW  
Washington DC 20463

**Re: MUR5392 – Respondent: University of Iowa Foundation**

Dear Mr. Jordan,

I am responding on behalf of the University of Iowa Foundation in connection with the Matter Under Review, No. 5392. This matter is a claim filed with the Commission by Annette Stewart, Jason Robert Cole and Michael Reid Davis, all of Iowa City, Iowa, and pertains to a lecture given by presidential candidate Wesley K. Clark on the campus of the University of Iowa on September 19, 2003. The claimants have alleged potential violations by the University of Iowa, the University of Iowa College of Law, the University of Iowa Foundation and the Richard S. Levitt Family Lecture Endowment Fund.

This letter is the response of the University of Iowa Foundation. The undersigned legal counsel and this firm have been designated by the University of Iowa Foundation to respond on its behalf. **An original executed Statement of Designation of Counsel is enclosed with this letter.**

**BACKGROUND INFORMATION**

**University of Iowa Foundation**

The University of Iowa Foundation ("UI Foundation") is an independent corporation organized under the laws of the State of Iowa as a nonprofit corporation and has 501(c)(3) tax exempt status. The principal mission of the UI Foundation is to support the educational and research missions of the University of Iowa ("University"). To further these objectives the UI Foundation engages in advancement and fundraising activities, and has a comprehensive program for the receipt of gift funds and subsequently the administration, investment, management and distribution of such funds consistent with donors' intentions

and the directions of the UI Foundation's Board of Directors. The UI Foundation has on its 28 member Board of Directors only one officer and employee of the University of Iowa and is not under the control or direction of the University.

**Iowa Law School Foundation**

The Iowa Law School Foundation is an independent corporation organized under the laws of the State of Iowa, with 501(c)(3) tax exempt status. The Iowa Law School Foundation's purpose is to support the College of Law at the University of Iowa ("College of Law"). In fulfilling this objective, the Iowa Law School Foundation engages in advancement and fundraising activities for the benefit of the College of Law. The Iowa Law School Foundation is controlled by an independent Board of Directors and is neither controlled by the University nor the College of Law. The Iowa Law School Foundation does not control the UI Foundation and the UI Foundation does not control the Iowa Law School Foundation. They are distinct and independent organizations.

**Richard S. Levitt Family Lecture Endowment Fund**

The Richard S. Levitt Family Lecture Endowment Fund ("Levitt Fund") is a donor directed endowment fund gifted by the Richard S. Levitt family to the Iowa Law School Foundation. The Levitt Fund was established by the donors for the purpose of sponsoring periodic lectures presented by the University of Iowa College of Law for the benefit of students, the University community and the broader public. The Levitt Fund is not a legal entity, but is merely a donor designated endowed fund which is owned and administered by the Iowa Law School Foundation consistent with the donor's intentions articulated when the gift establishing the fund was made. In the administration of the Levitt Fund, the Dean of the College of Law has been given broad discretion in selecting the lecturer and forum of the periodic lecture series.

**Relationship Among the Parties**

As indicated above, the University, the Iowa Law School Foundation and the UI Foundation are all organizationally and legally independent of one another. However, because the Iowa Law School Foundation was established for the benefit of the College of Law, it has a close relationship to the College of Law. The Dean of the College sits on the Iowa Law School Foundation's Board of Directors and provides advice and consultation as to the needs of the College of Law.

In order to most efficiently and effectively perform its mission, the Iowa Law School Foundation has contracted with the UI Foundation to provide certain gift administration, accounting and financial custodian services. In this regard, the UI Foundation acts as a custodian for some of the funds of the Iowa Law School Foundation, including most of its endowed funds. As such, the UI Foundation, as custodian for the Iowa Law School Foundation, holds the Levitt Fund for investment and distribution, all subject to the specific direction of the Iowa Law School Foundation Board of Directors and officers.

## **SPECIFIC RESPONSE TO THE COMPLAINT**

### **Role of the University of Iowa Foundation**

The UI Foundation has an indirect and very tangential connection to the activities alleged in the complaint filed in this matter. The Levitt Fund does not belong to the UI Foundation. The UI Foundation merely holds the Levitt Fund as a financial custodian under contract with the Iowa Law School Foundation. The UI Foundation has no authority nor discretion in connection with expenditures from the Levitt Fund, and in this instance exercised no discretion with respect to any specific expenditure from the Levitt Fund for the lecture of Wesley K. Clark at the University of Iowa on September 19, 2003.

To the best of the UI Foundation's information and belief, all decisions pertaining to the selection of the speaker, the scheduling of the event, the arrangements for the venue and all other logistics for Wesley K. Clark's presentation as a Richard S. Levitt Family Lecturer were made by William Hines, Dean of the College of Law, or his assistants and/or designees. To the best of the UI Foundation's information, the Iowa Law School Foundation, in administering the Levitt Fund, authorized Dean Hines to select the lecturer and make arrangements for the presentation of the lecture that occurred on the University of Iowa campus on September 19, 2003.

The UI Foundation's sole and limited role was to issue one or more checks from the Levitt Fund account to pay directly, or reimburse the University for, expenses associated with the lecture upon receipt of instructions from the Dean of the College of Law. Again, the sole role of the UI Foundation in these circumstances was merely as a custodian of an Iowa Law School Foundation account, the Levitt Fund, and issuance of payments as instructed by the Dean of the College of Law as authorized by the Iowa Law School Foundation Board of Directors. Under the UI Foundation's agreement with the Iowa Law School Foundation, it is obligated to abide by the instructions of the Iowa Law School Foundation and its representations.

As custodian for the Iowa Law School Foundation's Levitt Fund, the UI Foundation can confirm the receipt from Dean Hines on November 4, 2003 of a check from Greater Talent Network, Inc. in the amount of \$24,000 for deposit to the Levitt Fund in the form of a refund of Wesley Clark speaker fees.

### **Deferral to the University, the College of Law and/or the Iowa Law School Foundation on Substantive Issues**

Because of the limited role of the UI Foundation in merely acting as a custodian of funds, the UI Foundation defers to the University, the College of Law and/or the Iowa Law School Foundation to provide a response to the more substantive elements of the complaint relating to an alleged violation of the Federal Election Campaign Act of 1971, as amended. The UI Foundation did not make the decision to invite Wesley Clark as a speaker to the University of Iowa, nor was

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the UI Foundation in a position to take any actions regarding the September 19, 2003 campus visit and lecture after Wesley Clark announced, on September 17, 2003, that he was a candidate for president of the United States. The facts and circumstances relating to such matters are the personal knowledge of representatives of the University, the College of Law and/or the Iowa Law School Foundation, and not known to employees or representatives of the UI Foundation.

**Request to Federal Election Commission**

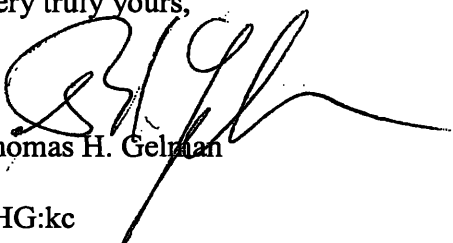
It is respectfully requested, based upon the facts and circumstances set forth above, that the Federal Election Commission or its designee find 1) that the University of Iowa Foundation's role in the circumstances alleged in the matter of MUR5392 was indirect and non-substantive, and 2) that there is no reason to believe the complaint sets forth a possible violation of the Act by the UI Foundation. **Accordingly, if is further respectfully requested, as relates to the University of Iowa Foundation, that the file on MUR5392 be closed and the Federal Elections Commission take no action against the UI Foundation in response to allegations in the complaint. Similarly, to the extent that the UI Foundation is the financial custodian of the Levitt Fund accounts, the UI Foundation requests a similar finding in reference to any allegations naming the Richard S. Levitt Family Lecture Endowment Fund.**

The UI Foundation takes no position as to the substantive merits of any of the allegations made against the University, the College of Law and/or the Iowa Law School Foundation. Each of these parties are likely to respond jointly or independently to the specific allegations of the complaint.

If upon review of this matter the University of Iowa Foundation's role in this matter is deemed to be material, and the complaint as relates to the UI Foundation is not dismissed, then the UI Foundation requests further opportunity to provide a more comprehensive response to the substantive elements of the complaint as well as legal argument as may be appropriate.

If after reviewing this material you require any additional information pertaining to the University of Iowa Foundation and its role in the matters complained of, you should not hesitate to contact me.

Very truly yours,

  
Thomas H. Gelman  
THG:kc

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Copies to:

Michael New, President  
University of Iowa Foundation  
Mark Schantz, General Counsel  
University of Iowa  
William Hines, Dean, College of Law  
University of Iowa  
Iowa Law School Foundation

\* \* \* \* \*

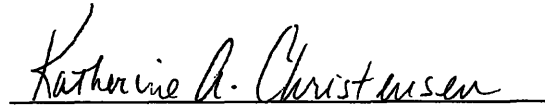
State of Iowa, County of Johnson, ss

The undersigned, being first duly sworn on oath does hereby state that she is the Secretary of the University of Iowa Foundation; that she is personally aware of the matters set forth in the preceding letter of Thomas H. Gelman, the legal counsel for the University of Iowa Foundation; and that the facts and circumstances so reported are true and correct.



Susan Shullaw

Subscribed and sworn to before me by the said Susan Shullaw this 11<sup>th</sup>  
day of November, 2003.

  
Notary Public for said State

## STATEMENT OF DESIGNATION OF COUNSEL


Please use one form for each respondent

MUR 5392

NAME OF COUNSEL: Thomas H. Gelman  
FIRM: Phelan, Tucker, Mullen, Walker, Tucker & Gelman, L.L.P.  
ADDRESS: P.O. Box 2150  
Iowa City IA 52244  
TELEPHONE: 319/354-1104  
FAX 319/354-6962

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

11-11-03  
Date

By:   
Susan Shullaw

Secretary  
Title

RESPONDENT'S NAME: University of Iowa Foundation  
ADDRESS: Levitt Center for University Advancement  
P. O. Box 4550  
Iowa City IA 52244-4550  
TELEPHONE: BUSINESS (319)335-3305